

S5 =

Business X =

Business Y =

State Z =

\$A =

b =

c% =

d =

Exchange =

Date =

Dear :

This letter responds to your August 8, 2007 letter from your authorized representative requesting rulings on certain federal income tax consequences of a series of transactions. Additional information was received in letters dated August 28, September 10 and September 26, 2007. The information provided in these letters is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Old Parent is a holding company that is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Old Parent holds legal title to certain intellectual property currently used by its subsidiaries in their Business X and Business Y. It directly owns 100 percent of the outstanding stock of the following corporations: S1, S3, S4, S5 and Controlled.

S1 is actively engaged, directly and through subsidiaries, in Business X. S3 is actively engaged, directly and through subsidiaries, in Business Y. S4 provides certain services in connection with Business Y. S5 is a captive insurance company that has elected under § 953(d) to be treated as a domestic corporation for Federal income tax purposes. In order to undertake the transaction described below, Old Parent will form both S2 and Distributing and has formed Controlled.

Financial information has been received indicating that Business X (as conducted by S1) and Business Y (as conducted by S3) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For what are represented as valid business reasons, Old Parent has proposed (and completed some of the steps of) a series of transactions. The steps described in paragraphs (i), (ii) and (iii) below are intended to be treated as one transaction. The steps described in paragraphs (iv) and (v) below are intended to be treated as one transaction. The steps described in paragraphs (vi) and (vii) below are intended to be treated as one transaction.

(i) **Old Parent Merger.** Old Parent will form Distributing and Distributing will form Merger Sub. Merger Sub will merge with and into Old Parent, with Old Parent surviving. As a result of the Old Parent Merger, Old Parent will become a wholly owned subsidiary of Distributing. Each outstanding share of Old Parent common stock (together with associated preferred stock purchase rights) will be exchanged for one identical share of Distributing common stock (together with associated preferred stock purchase rights), and the nominal shares of Distributing stock held by Old Parent will be cancelled. The shares of Distributing common stock will take the place of the shares of Old Parent common stock on the Exchange, and Distributing will under applicable securities law become a successor to Old Parent as the issuer.

Distributing will adopt a shareholder rights plan substantially identical to the shareholder rights plan in place with respect to Old Parent ("Distributing Rights Plan"). Under the Distributing Rights Plan, a preferred stock purchase right (a "Distributing Right") will trade together with each share of Distributing common stock until and unless certain events occur, as described in the Distributing Rights Plan.

Distributing will assume Old Parent's indebtedness and other liabilities (other than certain liabilities of Old Parent that are associated with Business X) and will take the place of Old Parent as the continuing sponsor of various employee benefit plans, previously maintained by Old Parent. Compensatory options to acquire Old Parent stock will be replaced with substantially identical options to acquire Distributing stock and shares of restricted stock of Old Parent will be converted into shares of Distributing with the same restrictions and limitations.

(ii) **Old Parent Distribution.** Old Parent will distribute all of its assets to Distributing. Those assets will include legal title to certain intellectual property formerly held by Old Parent (which may be transferred prior to the Old Parent Distribution to one or more single member limited liability companies that are disregarded for Federal tax purposes) plus the stock of all of Old Parent's subsidiaries, S2, S3, S4, S5 and Controlled.

Distributing, S3 and the domestic and foreign wholly owned subsidiaries of S3 will constitute a "separate affiliated group" within the meaning of § 355(b)(3)(B) ("Distributing SAG").

(iii) **Old Parent Conversion.** Old Parent will be converted into a single member limited liability company that will be disregarded for Federal tax purposes under § 301.7701-3 ("Old Parent LLC").

The Old Parent Merger, Old Parent Distribution and Old Parent Conversion, described above, is referred to as the "Old Parent Transaction."

(iv) **S1 Merger.** S1 will merge with and into Old Parent under State Z corporate law with Old Parent surviving.

(v) **S2 Contribution.** Old Parent will transfer all of the assets received by it in the S1 Merger to S2, in exchange for 100% of the outstanding stock of S2 and the assumption by S2 of certain liabilities of Old Parent to which Old Parent succeeded by reason of the S1 Merger as well as any other liabilities which Old Parent then has with respect to Business X.

Currently, S1 is liable as a co-obligor on certain indebtedness issued by Old Parent, which indebtedness will be assumed by Distributing in connection with the described transaction. Thus, it is not expected that S2 will be liable as a co-obligor with respect to such indebtedness.

The S1 Merger and the S2 Contribution, described above, is referred to as the "S1 Transaction."

(vi) **Controlled Contribution.** Distributing will contribute the stock of S2, legal title to the intellectual property used in Business X, and the sole membership interest in Old Parent LLC (which at the time will own no assets) to Controlled in exchange for additional shares of Controlled stock and approximately \$A in cash ("Cash Amount"), subject to the adjustments described below ("Net Cash Amount"). Controlled will fund the Net Cash Amount by borrowing money from one or more unrelated third party lenders.

Distributing will be required to refund to Controlled a portion of the Cash Amount to the extent that the positive net cash flow generated by Business X during the period from Date through the date of the Share Distribution, described below, exceeds the amount of cash and cash equivalents held by Controlled and its subsidiaries on the date of the Share Distribution (such portion is referred to as "Decrease to Cash Amount"). Conversely, Controlled will be required to distribute an additional amount of cash, as part of the Cash Amount, to Distributing following the Share Distribution to the extent that the amount of cash and cash equivalents held by Controlled and its subsidiaries on the date of the Share Distribution exceeds the net cash flow generated by Business X for the period from Date through the date of the Share Distribution (such portion is referred to as "Increase to Cash Amount" and the Cash Amount either reduced by the Decrease to Cash Amount or increased by the Increase to Cash Amount is referred to as the "Net Cash Amount").

Once received by Distributing, the Net Cash Amount will be segregated from the other assets of Distributing. Originally, Distributing had planned to use the Net Cash Amount for one or more of the following purposes: to make a special cash distribution to its shareholders or to repurchase shares of its outstanding stock in accordance with § 361(b)(1)(A) and/or pay down existing indebtedness of Distributing in accordance with § 361(b)(3).

Subsequent to the submission of this ruling request, in response to significant volatility in the stock market, Old Parent announced its authorization to repurchase an additional b shares, or almost c%, of its outstanding common stock. In addition, immediately prior to the submission of the ruling request, Old Parent had continuing authorization to purchase up to d shares of its outstanding common stock. Under the two share repurchase programs, Old Parent has begun to acquire, and expects to continue to acquire, shares of its outstanding common stock primarily through open market transactions. Old Parent intends to fund these purchases by drawing down an existing credit facility that it has to this point not used ("Drawdown Amounts").

Upon the receipt of a favorable ruling, Distributing plans to use some of the Net Cash Amount to be received from Controlled in connection with the Controlled Contribution to partially or fully repay the Drawdown Amounts under the existing

credit facility that were used to fund the recent share repurchases. The remainder of the Net Cash Amount will be used to fund additional share repurchases, and/or to pay down existing indebtedness, of Distributing, as described above. The disbursement of the Net Cash Amount will occur as promptly as practicable after the Share Distribution and in no event later than the first anniversary of the Share Distribution.

Controlled, S2 and the domestic and foreign wholly owned subsidiaries of S2 will constitute a "separate affiliated group" within the meaning of § 355(b)(2)(B) ("Controlled SAG").

(vii) **Share Distribution.** Distributing will distribute pro rata all shares of Controlled stock to Distributing's public shareholders on the basis of one Controlled share for every two Distributing shares held on the record date. Distributing will distribute cash instead of distributing a fractional share to any shareholder that otherwise would be entitled to receive a fractional share of Controlled common stock. Controlled will adopt a shareholder rights plan ("Controlled Rights Plan") substantially identical to the Distributing Rights Plan. Under the Controlled Rights Plan, a preferred stock purchase right (a "Controlled Right") will trade together with each share of Controlled common stock until and unless certain events occur as described in the Controlled Rights Plan.

The Controlled Contribution and the Share Distribution, described above, is referred to as the Proposed D/355 Transaction.

In connection with the Old Parent Transaction, Old Parent makes the following representations:

- (a) The fair market value of the Distributing stock to be received by the Old Parent shareholders in the Old Parent Merger will be equal to the fair market value of the Old Parent stock surrendered in the exchange.
- (b) Immediately following the consummation of the Old Parent Merger, the Old Parent shareholders will own all the outstanding Distributing stock and will own such stock solely by reason of their ownership of Old Parent stock immediately prior to the transaction.
- (c) Other than in connection with compensatory stock options or restricted stock, Distributing has no plan or intention to issue additional shares of its stock following the Old Parent Merger.
- (d) Immediately following consummation of the Old Parent Transaction, and prior to the Controlled Contribution, Distributing will possess the same assets and liabilities as those possessed by Old Parent immediately prior to the transaction, except that

Distributing will own S2 stock instead of S1 stock. Assets used to pay expenses incurred in connection with the Old Parent Transaction, and all redemptions and distributions (except for regular, normal dividends) made by Old Parent immediately preceding the transaction will, in the aggregate, constitute less than one percent of the net assets of Old Parent.

(e) Other than Old Parent options and benefit plans for employees and directors, at the time of the Old Parent Transaction, Old Parent will not have outstanding any warrants, options, convertible securities, or other type of right pursuant to which any person could acquire shares in Old Parent.

(f) The liabilities to be assumed (as determined under § 357(d)) by Distributing were incurred in the ordinary course of business and are associated with the assets being transferred.

(g) Distributing has no plan or intention to reacquire any of its stock issued in the transaction, except to the extent that Distributing uses the Net Cash Amount to be received in the Controlled Contribution to repurchase shares of its outstanding stock in accordance with § 361(b)(1)(A).

(h) Old Parent is not under the jurisdiction of a court in title 11 or similar case within the meaning of § 368(a)(3)(A).

(i) The Old Parent shareholders will each pay their respective expenses, if any, incurred in connection with the Old Parent Transaction.

(j) The Distributing Rights are the type of rights described in Rev. Rul. 90-11, 1990-1 C.B. 10.

In connection with the S1 Transaction, Old Parent makes the following representations:

(aa) The fair market value of the S2 stock to be received by the sole S1 shareholder in the S1 Transaction will be equal to the fair market value of the S1 stock surrendered in the exchange.

(bb) Immediately following the consummation of the S1 Transaction, the sole S1 shareholder will own all the outstanding S2 stock and will own such stock solely by reason of its ownership of S1 stock immediately prior to the transaction.

(cc) S2 has no plan or intention to issue additional shares of its stock following the S1 Transaction.

(dd) Immediately following consummation of the S1 Transaction, S2 will possess the same assets and liabilities as those possessed by S1 immediately prior to the

transaction, except that S2 will not be liable as a co-obligor with respect to certain indebtedness of Old Parent as to which S1 was a co-obligor. Assets used to pay expenses incurred in connection with the S1 Transaction, and all redemptions and distributions (except for regular, normal dividends) made by S1 immediately preceding the transaction will, in the aggregate, constitute less than one percent of the net assets of S1.

(ee) At the time of the S1 Transaction, S1 will not have outstanding any warrants, options, convertible securities, or other type of right pursuant to which any person could acquire shares in S1.

(ff) The liabilities to be assumed (as determined under § 357(d)) by S2 were incurred in the ordinary course of business and are associated with the assets being transferred.

(gg) S2 has no plan or intention to reacquire any of its stock issued in the transaction.

(hh) S1 is not under the jurisdiction of a court in title 11 or similar case within the meaning of § 368(a)(3)(A).

(ii) The sole S1 shareholder will pay its own expenses, if any, incurred in connection with the S1 Transaction.

In connection with the Proposed D/355 Transaction, Old Parent makes the following representations:

(aaa) The indebtedness, if any, owed by Controlled to Distributing after the Share Distribution will not constitute stock or securities.

(bbb) With the possible exception of the issuance of Controlled shares pursuant to adjustments to Distributing's existing stock options, restricted stock, or restricted stock unit awards, no part of the Controlled shares to be distributed in the Share Distribution is being received by any of Distributing's shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(ccc) The five years of financial information submitted on behalf of Business Y conducted directly by the members of the Distributing SAG is representative of its present operations and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements, submitted.

(ddd) The five years of financial information submitted on behalf of Business X conducted directly by the members of the Controlled SAG is representative of its present operations and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements, submitted.

(eee) Following the distribution, the Distributing SAG and the Controlled SAG will each continue the active conduct of its business, independently and with its separate employees.

(fff) The Share Distribution is being carried out for the following corporate business purposes: (i) to enhance the ability of Distributing, and that of Controlled, to respond to different industry dynamics in Business X and Business Y and therefore expand access to markets and better tailor strategic initiatives and priorities; (ii) to allow the investment community to evaluate Distributing and Controlled separately relative to the performance of their respective peers in Business X and Business Y; (iii) to provide Controlled with more direct access to the capital markets, without having to compete internally with Business Y for capital; (iv) to enable both companies to use their own respective equity securities as acquisition or financing currency, which has been inhibited by operating Business X and Business Y within a single consolidated group; (v) to enable each company to provide its management and employees with incentive compensation in the form of equity ownership tied to the business segment for which they are responsible; and (vi) to achieve cost savings. The Share Distribution is motivated, in whole or substantial part, by these corporate business purposes.

(ggg) The Share Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(hhh) For purposes of § 355(d), immediately after the Share Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Share Distribution.

(iii) For purposes of § 355(d), immediately after the Share Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Share Distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Share Distribution.

(jjj) The total fair market value of the assets transferred in the Controlled Contribution will be equal to or exceed the adjusted basis of those assets.

(kkk) The total fair market value of the assets transferred to Controlled in the Controlled Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The total adjusted basis of the assets transferred to Controlled by Distributing will equal or exceed the sum of (i) the liabilities assumed (as determined under § 357(d)) by Controlled and (ii) the fair market value of any other property (within the meaning of § 361(b)) and the amount of any money transferred by Controlled to Distributing that is distributed to the shareholders of Distributing or transferred to the creditors of Distributing pursuant to the plan of reorganization. Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the transactions were incurred in the ordinary course of business and are associated with the assets being transferred.

(III) There will not be any continuing indebtedness between Distributing and Controlled at the time of and following the Share Distribution, except for payables arising under transitional agreements or otherwise in the ordinary course of business and except for adjustments to the Cash Amount, as described above.

(mmm) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Any excess loss account of a member of the Controlled group in the stock of another member that is required to be taken into account by § 1.1502-19 will be included in income immediately before the Share Distribution. Further, at the time of the Share Distribution, Distributing will not have an excess loss account in the stock of Controlled.

(nnn) Payments made in connection with all continuing transactions after the distribution, if any, between Distributing (and its affiliates) and Controlled (and its affiliates) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(ooo) No two parties to the described transaction will be investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(ppp) In pursuance of the plan of reorganization, Distributing will transfer the Net Cash Amount to its shareholders (either as an extraordinary distribution or to repurchase outstanding stock) or to unrelated third-party creditors of Distributing in retirement of its outstanding debt. Except for any debt incurred for the purpose of funding share repurchases prior to the Share Distribution, such debt will have been outstanding prior

to any initial discussions regarding the Share Distribution by the board of directors of Old Parent.

(qqq) The distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(rrr) Neither Distributing nor Controlled is a "disqualified investment corporation" as defined in § 355(g)(2)(A).

(sss) The Controlled Rights are the type of rights described in Rev. Rul. 90-11, 1990-1 C.B. 10.

(ttt) The payment of cash in lieu of distributing fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. The method used for handling fractional shares is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled. The total amount of cash paid in lieu of fractional shares will not exceed one percent of the fair market value of Controlled shares distributed to the public in the Share Distribution.

(uuu) Distributing, Controlled, and its shareholders will each pay their own expenses, if any, incurred in connection with the distribution.

Based solely on the information and representations submitted, we rule as follows on the Old Parent Transaction:

1. The Old Parent Transaction will constitute a reorganization within the meaning of § 368(a)(1)(F). Distributing and Old Parent will each be "a party to the reorganization" within the meaning of § 368(b).
2. No gain or loss will be recognized by Old Parent upon the transfer of all of its assets to Distributing as part of the Old Parent Transaction (§ 361(a) and § 357(a)).
3. No gain or loss will be recognized by Distributing upon the receipts of all of the assets of Old Parent as part of the Old Parent Transaction (§ 1032(a)).
4. Distributing's basis in the assets of Old Parent will be the same as Old Parent's basis in its assets immediately before the Old Parent Transaction (§ 362(b)).
5. Distributing's holding period for each of the assets of Old Parent will include the period during which such asset was held by Old Parent (§ 1223(2)).

6. No gain or loss will be recognized by the stockholders of Old Parent on the receipt of the stock of Distributing in exchange for the stock of Old Parent (§ 354(a)(1)).
 7. The basis of the Distributing stock in the hands of the Old Parent shareholders will be equal, in the case of each such shareholder, to the basis of the Old Parent stock surrendered by that shareholder in exchange therefore (§ 358(a)(1)).
 8. The holding period for the Distributing stock in the hands of the Old Parent shareholders will include the period, in the case of each such shareholder, during which that shareholder held the Old Parent stock exchanged therefor, provided that the Old Parent stock is held as a capital asset in the hands of that shareholder on the date of the exchange (§ 1223(1)).
 9. As provided by § 381(a), Distributing will succeed to the tax attributes of Old Parent enumerated in § 381(c), including any Old Parent earnings and profits or any deficit therein.
 10. Since the Old Parent Transaction is treated as a reorganization within the meaning of § 368(a)(1)(F), the affiliated group of which Old Parent was the common parent corporation and the taxable year of such affiliated group will not terminate, and such affiliated group and such taxable year will continue with Distributing as the successor to Old Parent as the common parent of the affiliated group (§§ 1.381(b)-1(a)(2) and 1.1502-75(d)(2)(i)).
 11. Distributing will continue to use the taxpayer identification number previously assigned to Old Parent. Rev. Rul. 73-526, 1973-2 C.B. 404.
 12. Provided that, at the time of the Old Parent Transaction, the Distributing Rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of such rights by Old Parent and the shareholders of Old Parent will not constitute a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by Distributing, Old Parent, or any of their shareholders. Rev. Rul. 90-11, 1990-1 C.B. 10.
- Based solely on the information and representations submitted, we rule as follows on the S1 Transaction:
13. The S1 Transaction will constitute a reorganization within the meaning of § 368(a)(1)(F). S1 and S2 will each be "a party to the reorganization" within the meaning of § 368(b).
 14. No gain or loss will be recognized by S1 upon the transfer of all of its assets to S2 as part of the S1 Transaction (§ 361(a) and § 357(a)).

15. No gain or loss will be recognized by S2 upon the receipt of all of the assets of S1 as part of the S1 Transaction (§ 1032(a)).

16. S2's basis in the assets of S1 will be the same as S1's basis in its assets immediately before the S1 Transaction (§ 362(b)).

17. S2's holding period for each of the assets of S1 will include the period during which such asset was held by S1 (§ 1223(2)).

18. No gain or loss will be recognized by Old Parent upon the receipt of the stock of S2 in exchange for the stock of S1 (§ 354(a)(1)).

19. The basis of the S2 stock in the hands of Old Parent will be equal to the basis of the S1 stock surrendered in exchange therefore (§ 358(a)(1)).

20. The holding period for the S2 stock in the hands of Old Parent will include the period during which Old Parent held the S1 stock exchanged therefor, provided that the S1 stock is held as a capital asset in the hands of Old Parent on the date of the exchange (§ 1223(1)).

21. As provided by § 381(a), S2 will succeed to the tax attributes of S1 enumerated in § 381(c), including any S1 earnings and profits or any deficit therein.

22. S2 will continue to use the taxpayer identification number previously assigned to S1. Rev. Rul. 73-526, 1973-2 C.B. 404.

Based solely on the information and representations submitted, we rule as follows on the Proposed D/355 Transaction:

23. The Proposed D/355 Transaction will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under § 368(b).

24. Distributing will not recognize any gain or loss upon the transfer of assets to Controlled as part of the Controlled Contribution (§ 361(a)).

25. Controlled will not recognize any gain or loss upon the receipt of assets from Distributing as part of the Controlled Contribution (§ 1032(a)).

26. Controlled's basis in each asset received from Distributing in the Controlled Contribution will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

27. Controlled's holding period in each asset received from Distributing in the Controlled Contribution will include the period during which Distributing held that asset (§ 1223(2)).

28. Distributing will not recognize any gain or loss upon distribution of Controlled stock as part of the Share Distribution (§ 361(c)).

29. Distributing will not recognize any gain or loss upon the receipt of the Cash Amount from Controlled (§ 361(b)(1)(A) and (b)(3)).

30. The Increase to the Cash Amount made by Controlled to Distributing, or the Decrease to the Cash Amount made by Distributing to Controlled, will be treated as occurring as part of the Controlled Contribution. Thus: (i) if there is an Increase to the Cash Amount, Distributing will not recognize gain or loss upon the receipt of such amount (§ 361(b)(1)(A) and (b)(3)), or (ii) if there is a Decrease to the Cash Amount, Controlled will not recognize gain or loss upon the receipt of such amount (§ 361(a), (b)(1)(A) and (b)(3)). *Arrowsmith v. Commissioner*, 344 U.S. 6, 1952-2 C.B. 136 (1952) (tax character of later transaction will derive from earlier, related transaction).

31. No Distributing shareholder will recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of shares of Controlled stock as part of the Share Distribution (§ 355(a)(1)).

32. Provided that, at the time of the Share Distribution, the Controlled Rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of such rights by Distributing and its shareholders will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of gross income by Distributing, Controlled, or any of the Distributing shareholders. Rev. Rul. 90-11, 1990-1 C.B. 10.

33. The portion of the Net Cash Amount that is distributed to a Distributing shareholder (either with respect to that shareholder's Distributing stock or in exchange therefor) shall be taxed to that shareholder under § 301 or 302, as the case may be, by reason of § 356(b).

34. A Distributing shareholder who receives cash in lieu of a fractional share of Controlled common stock will recognize gain or loss measured by the difference between the basis of the fractional share deemed to have been received and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided such fractional share of stock would be held as a capital asset on the date of the Share Distribution (§§ 1221 and 1222).

35. The aggregate basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder immediately after the Share Distribution (including any fractional share interest in Controlled to which a Distributing shareholder may be entitled) will be the same as that shareholder's aggregate basis in the Distributing stock held immediately before the distribution, allocated in the manner described in § 1.358-2 (§ 358(a)(1), (b) and (c)).

36. The holding period of the Controlled stock received by each Distributing shareholder as part of the Share Distribution (including any fractional share interest in Controlled to which a Distributing shareholder may be entitled) will include the holding period of the

Distributing stock on which the distribution was made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

37. Earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a) and 1.1502-33(e)(3), after taking into account the decrease in earnings and profits attributable to the portion of the Net Cash Amount distributed to the Distributing shareholders.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one of the issues addressed in this ruling, i.e., the application of the SAG rules of § 355(b)(3), have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Steven J. Hankin
Senior Technician Reviewer, Branch 6
(Corporate)

cc: